REMARKS/ARGUMENTS

Regarding Amendments

In the specification, the "Cross Reference to Related Applications" section has been amended to update the status of referenced applications. These corrections are of a clerical nature and do not add "new matter".

Claims 1-77 are now pending.

No claims stand allowed.

The 35 U.S.C. § 101 Double Patenting Rejection

Claims 9-68 and 70-77 stand rejected under 35 U.S.C. as allegedly claiming the same invention as that of claims 1, 6-23, 28-45, 50-54, 59-63, 68-73, and 78-87 of U.S. Patent Application serial no. 09/661,582 (the '582 application), filed on September 14, 2000.¹ This rejection is respectfully traversed.

According to 35 U.S.C. § 101, "whoever invents or discovers any new and useful process ... may obtain a patent therefore." The term "same invention," in this context, means an invention drawn to *identical* subject matter.

¹ Office Action dated October 17, 2003, ¶ 3.

² 35 U.S.C. § 101.

³ See *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). (emphasis added)

Appl. No. 09/661,581

Amdt. dated: December 10, 2003

Reply to Office Action of October 17, 2003

Docket No. SUN-P4176 (811173-000095)

The independent claims (claims 1, 23, 45, 54, 63, 73, 82, and 85) of the '582

application recite in part:

said verification including determining binary compatibility of earlier program

unit implementations with later program unit implementations.

Claims 6-22, 28-44, 50-53, 59-62, 68-72, and 78-81, and 83-84 of the '582 application

are dependent claims and thus include this limitation.

Claims 9-68 and 70-77 of the present application do not recite verification including

determining binary compatibility of earlier program unit implementations with later

program unit implementations, so the '582 application and the present application are not

drawn to identical subject matter. Accordingly, the Applicant respectfully requests the

35 U.S.C. § 101 rejection be withdrawn.

The Obviousness-Type Double Patenting Rejection

Claims 1-9 and 69 stand rejected under the judicially created doctrine of

obviousness-type double patenting as being unpatentable over claims 1, 10, 11, 15, 16,

17, 18, and 19 of commonly owned U.S. Patent Application serial no. 09/661,582, filed

on September 14, 2000. Submitted herewith is a terminal disclaimer in accordance with

37 CFR 1.321 (b) and (c). Accordingly, the Applicant respectfully requests the

obviousness-type double patenting rejection be withdrawn.

5

Appl. No. 09/661,581 Amdt. dated: December 10, 2003

Reply to Office Action of October 17, 2003

Docket No. SUN-P4176 (811173-000095)

In view of the foregoing, it is respectfully asserted that the claims are now in

condition for allowance.

Request for Allowance

It is believed that this Amendment places the above-identified patent application

into condition for allowance. Early favorable consideration of this Amendment is

earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of

this application, the Examiner is invited to call the undersigned attorney at the number

indicated below.

Respectfully submitted,

THELEN REID & PRIEST, LLP

Dated: December_ 10, 2003

John P. Schuab

Reg. No. 42,125

Thelen Reid & Priest LLP

P.O. Box 640640

San Jose, CA 95164-0640

Tel. (408) 292-5800

Fax. (408) 287-8040

⁴ Office Action ¶ 5.

6